Neutral Citation Number: [2026] UKUT 146 (AAC)
Appeal No. UA-2024-000827-GIA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

UNITED KINGDOM RESEARCH & INNOVATION

Appellant

- v -

THE INFORMATION COMMISSIONER

First Respondent

- and -

REUBEN KIRKHAM

Second Respondent

Before:	**Upper Tribunal Judge Church**
Hearing date(s):	27 & 28 January 2026
Mode of hearing:	Remote oral hearing by CVP

Representation:	
Appellant:	John Goss of counsel
First Respondent:	Joseph Lavery of counsel
Second Respondent:	In person

On appeal from:

Tribunal:	First-tier Tribunal (General Regulatory Chamber)
Panel:	Tribunal Judge Chris Hughes, Tribunal Member Anne Chafer and Tribunal Member Marion Saunders
Tribunal Case Nos:	EA/2018/0216 and EA/2019/0139
Tribunal Venue:	Remote video hearing by CVP
Decision Date:	21 March 2024

SUMMARY OF DECISION

INFORMATION RIGHTS (93)

These appeals concern two Freedom of Information requests made to the body now known as UK Research and Innovation (UKRI), which is a major funder of scientific research. The requests sought information arising from mid-term reviews of university-run Centres for Doctoral Training (CDTs) funded by UKRI, including scores, feedback, submissions and related correspondence.

The Upper Tribunal's decision addresses three main issues

First, it considers whether the requests fall to be treated under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR). It upholds the FtT's conclusion that, while CDTs work in areas connected to environmental priorities, the "measure" that the requested information is "on" is the assessment and performance management of the CDTs, and not the underlying research. That administrative evaluation is not a "measure" with the required environmental impact for EIR purposes. FOIA therefore applies.

Second, it considers whether the FtT's decision making in relation to section 36 FOIA (prejudice to the effective conduct of public affairs) was in error of law. It decides that the FtT was not required to accord "deference" to the opinion of the "qualified person", but rather was required to give it "appropriate" consideration. In all the circumstances (including the opinion being very brief and short on reasoning) it was appropriate for the FtT to give it very limited weight and to conclude, after a proper public interest balancing exercise, that the public interest in transparency and accountability outweighed the public interest in maintaining the exemption.

Third, in relation to section 41 FOIA (information provided in confidence), it found that the FtT had erred materially in law in:

> (a) failing properly to apply the tests set out in ***Coco v AN Clark (Engineers) Ltd*** [1968] FSR 415;
>
> (b) deciding that the requested information was not confidential based on its assessment of whether UKRI regarded the information as confidential (when it should have focused instead on whether the information was imparted in expectation of confidence and whether the preservation of the information's confidentiality was "of substantial concern" to the confiding party (see ***Moorgate Tobacco Co Ltd v Philip Morris Ltd (No. 2)*** (1984) 156 CLR 414 at 438); and
>
> (c) treating section 41 FOIA as if it is a qualified exemption requiring a section 2(2(b) FOIA balancing exercise, when it is an absolute exemption subject only to there being a strong public interest (which must be "exceptional" (see ***London Regional Transport v Mayor of London*** [2003] EMLR 4)) sufficient to defeat an otherwise actionable breach of confidence.

The Upper Tribunal dismissed UKRI's appeal concerning the first information request, but allowed its appeal concerning the second information request. The FtT's decision in relation to the second information request was set aside and the case remitted to the First-tier Tribunal for reconsideration using the correct legal tests.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to:

1. **dismiss the appeal against the First-tier Tribunal's decision in appeal EA/2018/0216 and to confirm the decision of the First-tier Tribunal; and**
2. **allow the appeal against the First-tier Tribunal's decision in appeal EA/2019/0139, to set the decision aside and to remit the matter for re-determination by the First-tier Tribunal.**

DIRECTIONS

3. **The appeal in respect of the Second Request (appeal EA/2019/0139) is remitted to the First-tier Tribunal for reconsideration.**
4. **If any party has any further evidence to put before the First-tier Tribunal this should be sent to His Majesty's Courts and Tribunals Service within one month of the date on which this decision is issued.**
5. **The First-tier Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal.**
6. **A copy of this decision shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeal.**
7. **These Directions may be supplemented by later directions by a tribunal judge, registrar or caseworker in the General Regulatory Chamber of the First-tier Tribunal.**

REASONS FOR DECISION

Introduction

1. The Appellant is a public body that invests public money in research and innovation. The functions of its predecessor, the Engineering and Physical Science Research Council (**"EPSRC"**), were transferred to it with effect from 1 April 2018.
2. UKRI's activities (and those of its predecessor) include funding doctoral training. Centres for Doctoral Training (**"CDTs"**) have been established by universities to offer structured training to PhD students over four years, often in collaboration with industry, as an alternative to the more traditional three-year PhD model. Monitoring and evaluation of the performance of CDTs was carried out by EPSRC against various targets.
3. This appeal relates to two requests for information made by the Second Respondent (the **"Requester"**) on 15 August 2017 (the **"First Request"**) and 15 May 2018 (the **"Second Request"** and, together with the First Request, the **"Requests"**).
4. The First Request was made to the EPSRC, but by the time of the Second Request, the EPSRC's functions had transferred to the Appellant. The Requests were for information relating the mid-term review of the CDTs' performance.
5. This appeal is mainly about whether the First-tier Tribunal applied the correct legal tests when deciding whether the public authority was entitled to rely upon the exemptions under sections 36 and 41 of the Freedom of Information Act 2000 (**"FOIA"**).

Factual background

The First Request

6. On 15 August 2017 Dr Kirkham wrote to the EPSRC to make the First Request in the following terms:

> "I write to make a request under the Freedom of Information Act (2000) concerning the mid-term review for Centres for Doctoral Training. This was summarized here:
>
> https://www.epsrc.ac.uk/newsevents/news/cdtreview/
>
> In respect of that exercise, I ask for:
>
> 1. The scores of each institution (including their meaning, e.g. if they were scored based on 1- 5, then an indication of which was lowest or highest).
>
> 2. The entire spreadsheet that contains said scores (if it exists).
>
> 3. The feedback provided to each institution or centre from this exercise."

7. The EPSRC responded on 11 September 2017 confirming that it held the information identified in parts 1 and 2 of the request for each institution, it held scores for each CDT, and it held feedback provided to each institution. However, EPSRC refused to disclose that information, relying on the exemptions provided for in sections 36(2)(b) and (c) (relying on the opinion of its then Chief Executive Officer, Professor Nelson, who was a "qualified person" for the purposes of FOIA), as well as section 41 and 40(2) of FOIA. EPSRC maintained that position on internal review.

8. The Requester complained to the Information Commissioner, arguing that some of the information he had requested amounted to environmental information, and the appropriate regime in respect of that information was therefore the Environmental Information Regulations 2004 (**"EIR"**), rather than FOIA, and arguing that the exemptions invoked in refusing to disclose the requested information were not applicable.

9. The Information Commissioner carried out an investigation and, by a Decision Notice dated 7 September 2018 (the **"First Decision Notice"**), found:

    a. the information requested was not "environmental information" and so the appropriate regime was FOIA, not EIR;

    b. section 36(2)(c) FOIA was engaged;

    c. with respect to the scores and feedback letters, the public interest in disclosure outweighed the public interest in maintaining the exemption; and

    d. with respect to the emails to individual researchers, the public interest in maintaining the exemption outweighed the public interest in disclosure.

10. The Information Commissioner ordered that the scores and feedback letters be disclosed, subject to redaction of personal information contained in them.

11. Dissatisfied with this outcome, Dr Kirkham appealed the First Decision Notice to the First-tier Tribunal insofar as it upheld the non-disclosure of the emails to individual researchers.

The Second Request

12. On 15 May 2018 the Requester made the Second Request (which overlapped with the First Request) to UKRI in the following terms:

> "I write to make a request under the Environmental Information Regulations (2004). In 2013, the EPSRC funded a number of CDT's under certain environmental priority areas. For the purposes of this request, these areas are:
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/caca/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/enduse/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/enesto/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/hydrofuel/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/mathsciences/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/nuclear/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/solar/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/sustbuilt/
>
> https://epsrc.ukri.org/skills/students/centres/2013cdtexercise/priorityareas/water/
>
> For CDT's funded under these priority areas, I ask for the following:
>
> - The submission to the Mid-term review on behalf of the CDT.
> - Any submitted case studies.
> - The feedback provided in response.
>
> In respect of a submission to the Mid-term review, please find attached an example of what I am looking for. I also provide a similar attachment in respect of case studies.
>
> This request is made under the Environmental Information Regulations (2004), on the basis that the CDTs in question are expressly measures (Reg 2(c)) aimed at advancing the associated environmental concerns found in Regs 2(a) and 2(b): indeed, the EPSRC claims they are "critical" to them. The reports concerning the performance of such measures are therefore plainly environmental information applying UTJ Wikeley's decision in ***Department for Energy and Climate Change v The***

> ***Information Commissioner & Anor*** [2015] UKUT 671 (AAC) (since approved by the Court of Appeal). Moreover, the public interest is overwhelming, as I understand at least one CDT has failed to meet the high standards of these priority areas (especially in respect of the expressed aspirations), and presumably many more have also done so. The EPSRC is therefore misleading the public about the success of these 'measures', as well as preventing an informed public debate about our environmental future, clean air, and the sustainability of our society's energy systems."

13. On 12 July 2018 UKRI responded to the Second Request. It refused to disclose the requested information, initially relying on s36 and s.41 FOIA. On internal review UKRI abandoned its reliance on s.36 but maintained reliance on s.41 FOIA. The Requester complained to the Information Commissioner in relation to its handling of the Second Request.

14. The Information Commissioner investigated the complaint and, by a Decision Notice dated 19 March 2019 (the **"Second Decision Notice"**), found:

    a. the requested information requested had the necessary quality of confidence;

    b. the requested information had been imparted to it in circumstances importing an obligation of confidence;

    c. disclosure of the requested information would amount to an unauthorised use of the information to the detriment of the provider; and

    d. no public interest defence would be available to an otherwise actionable breach of confidence.

15. The Information Commissioner decided that UKRI was, therefore, entitled to rely upon the s.41 FOIA exemption and required no further action to be taken.

16. Dissatisfied with this outcome, on 10 April 2019 the Requester appealed the Second Decision Notice to the First-tier Tribunal.

Legal framework

The Freedom of Information Act 2000

17. FOIA provides for a general right of access to information held by public authorities.

18. Section 1 FOIA provides:

> **"1. General right of access to information held by public authorities**
>
> (1) Any person making a request for information to a public authority is entitled-
>
> a. to be informed in writing by the public authority whether it holds information fo the description specified in the request, and
>
> b. if that is the case, to have that information communicated to him…"

19. The general right of access to information provided for by section 1 is subject to certain exemptions, as explained in section 2 FOIA, which provides (so far as relevant to this appeal):

> **"2. Effect of the exemptions in Part II**
>
> (1) Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either-
>
> a. the provision confers absolute exemption, or
>
> b. in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information,
>
> section 1(1)(a) does not apply.
>
> (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that-
>
> a. the information is exempt information by virtue of a provision conferring absolute exemption, or
>
> b. in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
>
> (3) For the purposes of this section, the following provisions of Part II (And no others) are to be regarded as conferring absolute exemption-
>
> …
>
> (g) section 41 …"

20. Section 36 provides for a qualified exemption related to prejudice to the effective conduct of public affairs. It provides (so far as relevant to the circumstances of this appeal):

> **"36. Prejudice to effective conduct of public affairs**
>
> (1) This section applies to-
>
> a. information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and
>
> b. information which is held by any other public authority.
>
> (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-
>
> a. Would, or would be likely to, prejudice-
>
> i. the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
>
> ii. the work of the Executive Committee of the Northern Ireland Assembly, or

iii. the work of the Cabinet of the Welsh Assembly Government,

b. would, or would be likely to, inhibit--

iv. the free and frank provision of advice, or

v. the free and frank exchange of views for the purposes of deliberation, or

c. would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

(3) The duty to confirm or deny does not arise in relation to information to which this section applies or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

…

(5) In subsections (2) and (3) 'qualified person'-

…

o. In relation to information held by a public authority not falling within any of paragraphs (a) to (n), means-

…

iii. any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.

21. Section 41 FOIA creates an absolute exemption in relation to certain information provided in confidence. It provides:

"41. Information provided in confidence

(1) Information is exempt information if-

a. it was obtained by the public authority from any other person (including another public authority), and

b. the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence."

22. Section 81 FOIA deals with the application of FOIA to government departments. It provides:

"81. Application to government departments etc.

(1) For the purposes of this Act each government department is to be treated as a person separate from any other government department.

(2) Subsection (1) does not enable-

a. a government department which is not a Northern Ireland department to claim for the purposes of section 41(1)(b) that the disclosure of any information by it would constitute a breach of confidence actionable by any other government department (not being a Northern Ireland department), or

b. a Northern Ireland department to claim for those purposes that the disclosure of information by it would constitute a breach of confidence actionable by any other Northern Ireland department.

…"

The Environmental Information Regulations

23. Reg. 2(1) defines "environmental information" as:

> "any information in written, visual, aural, electronic or any other material form on—
>
> (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
>
> (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
>
> (c) measures, (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements …"

The proceedings before the First-tier Tribunal

24. Appeals EA/2018/0216 (which related to the First Request) and EA/2019/0139 (which related to the Second Request) were consolidated and heard together at a remote oral hearing on 7 November 2023.

25. While UKRI and the Information Commissioner made written submissions opposing the appeal, neither was represented at the hearing before the First-tier Tribunal. The Requester attended the hearing and represented himself.

26. The First-tier Tribunal allowed both appeals and substituted for the First ICO Decision Notice and the Second ICO Decision Notice a Notice requiring the material identified by the Requests which had not already been disclosed pursuant to the First Decision Notice to be disclosed (subject to redaction of personal information) within 35 days of the date of the decision (the **"FtT Decision"**).

27. UKRI applied to the First-tier Tribunal for permission to appeal the FtT Decision. That application was unsuccessful.

The proceedings before the Upper Tribunal

28. UKRI renewed its permission application to the Upper Tribunal. After Judge Citron refused permission on the papers UKRI exercised its right to renew the application at an oral hearing, and the matter came before me.

The grounds of appeal, "additional reasons" and the parties' submissions

29. UKRI's grounds of appeal can be summarised as:

    a. in appeal EA/2018/0216 the First-tier Tribunal erred in its approach to the public interest test as it applies to section 36(2)(c) FOIA (**"Appeal Ground 1"**);

    b. in appeal EA/2019/0139 the First-tier Tribunal erred in relation to whether the information requested was "confidential" for the purposes of section 41 FOIA (**"Appeal Ground 2"**); and

    c. in appeal EA/2019/0139 the First-tier Tribunal erred in relation to the availability of the "public interest defence" to an otherwise actionable breach of confidence (**"Appeal Ground 3"**).

30. The Information Commissioner resisted Appeal Ground 1 but supported Appeal Grounds 2 and 3.

31. The Requester resisted each of the grounds of appeal and made some additional arguments which he believed strengthened the case for dismissing UKRI's grounds of appeal or for denying UKRI the relief it seeks. I refer to these as the Requester's "Additional Reasons". They can be summarised (using the numbering adopted by the parties) as:

    a. UKRI should be denied any remedy because it conducted its case before the First-tier Tribunal very poorly, chose not to be represented at the hearing, and should not be rewarded for its failings (**"Additional Reason 1"**);

    b. UKRI is estopped from relying on section 36 FOIA in relation to the First Request by its choice not to rely on that exemption in relation to the Second Request (in respect of which no qualified person's opinion was provided) **"Additional Reason 2"**;

    c. the section 36 opinion on which UKRI relied in appeal EA/2018/0216 was either not held by its qualified person (Professor Nelson) or, if it was held by him, was not reasonable **"Additional Reason 3"**;

    d. the Requests included requests for environmental information, and disclosure of that information should have been considered under EIR (and not FOIA) **"Additional Reason 3A"**;

    e. the qualified person's opinion provided by Professor Nelson amounted to a "generalised protest against FOIA" **"Additional Reason 4"**;

    f. no actionable breach of confidence can arise on a transaction between two public authorities which are both subject to FOIA **"Additional Reason 5"**; and

    g. no actionable breach of confidence could arise in respect of disclosure of the information the subject of the Second Request because the information was UKRI's "own information" **"Additional Reason 6"**.

32. Each of the Requester's Additional Reasons were resisted by both UKRI and the Information Commissioner.

33. I granted permission to appeal in respect of each of UKRI's appeal grounds and I also gave permission for the Requester to argue his Additional Reasons. I ordered an oral hearing of the substantive appeal.

34. I shall address the various Appeal Grounds and Additional Reasons in the order that counsel addressed them, but retaining the numbering used by the parties in their skeleton arguments and written submissions.

Analysis

Additional Reason 3A: *Should the First-tier Tribunal have applied EIR?*

35. The Requester's Additional Reason 3A proceeded from his position that some or all of the information covered by the Requests was "environmental information" for the purposes of EIR, and so both the Information Commissioner and the First-tier Tribunal applied the wrong regime in respect of that information. Because this argument alleges such a fundamental error of law which is relevant to both appeals, I shall address this argument first.

36. While the Requester expressed his First Request as *"a request under the Freedom of Information Act (2000)"*, the Information Commissioner nonetheless considered whether the EIR was the appropriate regime to apply. However, she concluded it was not and gave reasons for her conclusion.

37. When the Requester made the Second Request, he framed it as a request falling under the EIR:

> "This request is made under the Environmental Information Regulations (2004), on the basis that the CDTs in question are expressly measures (Reg 2I) aimed at advancing the associated environmental concerns found in Regs 2(a) and 2(b): indeed, the EPSRC claims they are "critical" to them. The reports concerning the performance of such measures are therefore plainly environmental information applying UTJ Wikeley's decision in ***Department for Energy and Climate Change v The Information Commissioner & Anor*** [2015] UKUT 671 (AAC) (since approved by the Court of Appeal). Moreover, the public interest is overwhelming, as I understand at least one CDT has failed to meet the high standards of these priority areas (especially in respect of the expressed aspirations), and presumably many more have also done so. The EPSRC is therefore misleading the public about the success of these 'measures', as well as preventing an informed public debate about our environmental future, clean air, and the sustainability of our society's energy systems."

38. The Information Commissioner did not address the fact that the Requester had framed the Second Request as being made under the EIR, but she applied FOIA, and not EIR, just as she had done in her First Decision Notice.

39. In the appeal before the First-tier Tribunal, the Requester argued that the EIR applied to much of the information in the Requests because the information requested related to measures that fell within the EIR. That argument was acknowledged by the First-tier Tribunal but rejected.

40. The First-tier Tribunal noted that the third limb of the definition of "environmental information" in EIR (set out in full in paragraph 23 above) referred back to the previous two limbs, and explained what it considered the proper approach to determining the correct regime to apply in paragraph 20 of the FtT Decision (see pages 25-6 of the UT Bundle):

> "The approach to this question is to determine what [sic] the "measure" which the information is "on" – information is "on" a measure if it is about or relates to or concerns the measure in question, it is permissible to go beyond the precise issue with which the disputed information is concerned in identifying the relevant "measure". However, it is not permissible to look at issues with which the information is not concerned or with which it is merely connected. Applying this approach, it is clear that the information is "on" the performance of Centres for Doctoral Training. The information relates to such things as integration of CDTs into a wider research and industrial community and the engagement of students with their training programmes. The information was collected with a view to ensuring the effective governance of these programmes and their economy, efficiency and equity. The context and the facts clearly indicate that this material falls outwith EIR."

41. In ***DBEIS v Information Commissioner and Henney*** [2017] EWCA Civ 844 (***"Henney"***) the Court of Appeal considered the proper approach to determining whether information is "environmental information" for the purposes of the EIR. Beatson LJ said the "starting point" was that the EIR must be interpreted as far as possible in the light of the wording and purpose of Parliament and Council Directive 2003/4/EC (the **"Directive"**), which itself gives effect to international obligations arising under the Aarhus Convention (at [14]). He said it was well-established that the term "environmental information" in the Directive was to be given a broad meaning, but cautioned that there were limits to the broad approach, citing the statement in ***Glawischnig v Bundesminister für soziale Sicherheit und Generationen*** (Case C-316/01) EU:C:2003:343 (***"Glawischnig"*** at [25] that the fact that the Directive is to be given a broad meaning did not mean that it intended:

> "to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned… To be covered by the right of access that it establishes, such information must fall within one of more of the … categories set out in that provision."

42. Beatson LJ explained the task of determining whether information is "environmental information" for EIR purposes as comprising two elements:

    a. identification of the relevant "measure" that the information in question is "on"; and

    b. determination of whether the measure has the requisite environmental impact.

43. That is precisely what the First-tier Tribunal did: it found that the "measure" that the requested information was "on" was "the performance of Centres for Doctoral Training". The Requester did not dispute that finding, and it was a finding that was clearly open to the First-tier Tribunal on the evidence before it when

approached in a way consistent both with the Directive and with ***Glawischnig***. Indeed, it was not only a permissible finding, it was the only finding open to it.

44. The First-tier Tribunal found that the measure of assessing the performance of CDTs did not *itself* have the requisite environmental impact. While the Requester argued that the underlying data was originally collected by the universities/CDTs for purposes that did have the requisite environmental impact, that is insufficient to render the requested information "environmental information", and it is not consistent with the approach approved by the Court of Appeal in ***Henney,*** because it ignores the identified "measure" that the requested information was "on". The measure was not "on" the underlying research, it was "on" the assessment of the performance of CDTs.

45. For these reasons, I am not persuaded that the First-tier Tribunal erred in applying the tests under FOIA, and not EIR, in assessing whether UKRI had a duty to disclose the information requested by the Requester.

46. Further, if I am wrong about all of this and the Requester is right in his analysis, that would disclose such a fundamental error of law in the FtT Decision that it is difficult to see how it could be appropriate for the Upper Tribunal to exercise its discretion not to set the decision aside. If the First-tier Tribunal applied the wrong statutory framework to its decision making then surely the only proper course would be to set the decision aside and remit it to the First-tier Tribunal to consider the matter afresh applying the correct statutory scheme.

Additional Reason 1: *Should UKRI be denied any remedy because of its conduct of the case before the First-tier Tribunal?*

47. The Requester argued that Additional Reason 2 was a "complete answer" to UKRI's case in these appeals, so it makes sense to deal with it before considering UKRI's appeal grounds, as the parties did at the hearing before me.

48. The Requester says that UKRI failed to advance a coherent case before the First-tier Tribunal, and relies on ***Clare Page v The Information Commissioner & Anor*** [2025] UKUT 308 (AAC) (***"Page"***) as authority for the proposition that when a respondent has failed to address a point of law in issue in an appeal, the tribunal is entitled to take the appellant's case on the law on that point at face value. The Requester says that UKRI should not now be permitted to advance arguments that it did not make at first instance.

49. Mr Goss rightly conceded that the First-tier Tribunal would likely have been assisted had UKRI participated more actively in the First-tier proceedings, but he disputed the Requester's suggestion that UKRI had not advanced a case before the First-tier Tribunal at all.

50. I can deal with Additional Reason 1 briefly because, while UKRI neither appeared nor was represented at the hearing of the appeal before the First-tier Tribunal, it did make written submissions in those proceedings and in those submissions it essentially aligned itself with the case being advanced by the Information Commissioner, who was represented. The points raised by UKRI in its appeal grounds are points that were "live" before the First-tier Tribunal (albeit advanced by the Information Commissioner rather than UKRI), and UKRI's appeal is brought on the basis that the First-tier Tribunal erred in the way it answered those points, so ***Page*** is distinguishable. For these reasons, Additional Reason 1 does not get off the ground.

51. The Requester made much of the "absurd" way he said UKRI pursued its case, and argued that given UKRI's "unusual conduct" it should be denied a remedy. However, the role of the Upper Tribunal on appeal is to identify whether the first instance tribunal has erred materially in law, not to punish parties for the way they have presented their case below. While some of the matters raised by the Requester such as the conduct of the individuals who had conduct of its case at an earlier stage, are no doubt the cause of some embarrassment to UKRI, they are irrelevant to the matters I must decide in these appeals.

Additional Reason 2: *UKRI is estopped from relying on section 36 FOIA in relation to the First Request by its choice not to rely on that exemption in relation to the Second Request (in respect of which no qualified person's opinion was provided).*

52. The UKRI relied upon the opinion of "qualified person" Prof Nelson in resisting disclosure of the information the subject of the First Request under section 36 FOIA, but did not rely on s.36 FOIA in its response to the Second Request. The Requester inferred from this decision that UKRI's new qualified person (Sir Mark Walport) was unwilling to provide the requisite opinion under section 36 FOIA, and this indicated that reliance on section 36 FOIA in relation to the First Request was not appropriate. The Requester said UKRI was estopped from relying on that exemption in respect of the First Request. That argument is misconceived for two reasons:

    a. estoppel is a common law doctrine, while FOIA is a statutory scheme, and as the Upper Tribunal held in ***Ingle v The Information Commissioner & Cambridgeshire County Council*** [2023] UKUT 80 (AAC) (***"Ingle"***) estoppel must "give way to the principles of a statutory scheme", and

    b. the various exemptions under FOIA, where they apply, exempt a public authority from doing what section 1 FOIA would otherwise require it to do. A public authority may decide to disclose requested information even if it considers that an exemption applies, and even where the public authority does rely on an exemption, there is nothing to say that it must rely on every exemption it considers to apply, and a public authority which has relied on one exemption may later invoke an additional or alternative exemption later, whether in the same proceedings or in separate proceedings.

53. The First-tier Tribunal was clearly aware that Professor Nelson (EPSRC's "qualified person") and Sir Mark Walport (UKRI's "qualified person") took different approaches to section 36 FOIA. It was entitled to find that UKRI's decision not to rely on section 36 in relation to the Second Request did not undermine or otherwise impugn reliance on section 36 in relation to the First Request, because the "status of an opinion by a qualified person … is unaffected … by the fact that the next qualified person came to a different view" (see paragraph 21 of the FtT Decision). Neither am I persuaded by the Requester's argument that UKRI should be treated as having abandoned its reliance on section 36 FOIA in relation to the First Request because of its subsequent conduct.

54. The First-tier Tribunal directed itself correctly as to the test it had to apply in considering whether the exemption under s.36 FOIA was engaged: there had to be a "reasonable opinion of a qualified person", and "there are in many

circumstances a range of reasonable opinions an individual may take" (see paragraph 21 of the FtT Decision).

Additional Reason 3: *The s.36 opinion on which UKRI relied in appeal EA/2018/0216 was either not held by its qualified person (Prof. Nelson) or, if it was held by him, was not reasonable.*

55. Prof. Nelson's opinion was expressed in an email sent on 8 September 2017 (to be found in the First-tier Tribunal appeal bundle at page E417) was:

> "I am sure that we should apply Section 36 to this case"

56. The Requester does not accept that Prof. Nelson genuinely held that opinion, believing that he simply "rubber stamped" the request for an opinion without having taken the trouble to understand the background to form his own view.

57. While the First-tier Tribunal's reasons would have been clearer had it said more about what it concluded instead of simply reciting without criticism what the Commissioner had concluded, it is adequately clear when the FtT Decision is read as a whole that it accepted at face value that Prof. Nelson's opinion was genuinely held and that it was reasonable.

58. It is fair to say that Prof. Nelson's opinion expressed in his email was extremely brief and wholly lacking in explanation. More detail of why Prof. Nelson considered section 36 FOIA to be applicable would undoubtedly have been helpful and might have affected the weight that the First-tier Tribunal felt able to give it. However, the First-tier Tribunal was entitled to accept Prof. Nelson's opinion as being reasonable and genuinely held.

59. That does not mean that the First-tier Tribunal was bound to find the exemption to apply. Rather, it engaged section 36 FOIA, opening the door to consideration of the merits of the public authority's reliance on section 36 FOIA. That is what the First-tier Tribunal did. Ultimately it decided that the balance of the public interest fell in favour of disclosure rather than in upholding the exemption, a decision which I discuss further in relation to Appeal Ground 1 below.

Additional Reason 4: *The qualified person's opinion provided by Professor Nelson amounted to a "generalised protest against FOIA".*

60. Prof. Nelson's opinion was that the public authority should apply the exemption provided for by section 36 FOIA to resist disclosure of the information requested in the First Request. As discussed above, the First-tier Tribunal was entitled to accept Prof. Nelson's opinion as being reasonable and genuinely held. The public authority disclosed the information it was required to disclose by the Information Commissioner's First Decision Notice. I do not consider that Additional Reason 4 adds anything to Additional Reason 3 discussed above.

Additional Reason 5: *No actionable breach of confidence can arise on a transaction between two public authorities which are both subject to FOIA.*

61. This Additional Reason is a misstatement of the law. While section 81(2)(a) FOIA prevents reliance on the exemption in section 41(1)(b) FOIA in respect of information disclosed between government departments, section 41 FOIA expressly provides for the exemption being available where the information is obtained from another person "including another public authority". The parties in

question in this case are not government departments, so section 81(2)(a) FOIA is not applicable, and section 41 FOIA applies.

62. The questions that must be answered when assessing whether the exemption under section 41 FOIA applies are:

    a. whether the information held by the recipient public authority to which the request relates was provided to it in confidence,

    b. whether disclosure of the information to the public by the recipient public authority (other than in accordance with FOIA) would give rise to an actionable breach of confidence, and

    c. whether the recipient public authority would have a successful defence.

63. Whether the confiding public authority would itself be amenable to a FOIA request in respect of the relevant information, and whether an exemption would be available to it, are not relevant to the issue of whether the section 41 FOIA exemption is available to the recipient public authority. Additional Reason 5 therefore fails.

Additional Reason 6: *No actionable breach of confidence could arise in respect of disclosure of the information the subject of the Second Request because the information was UKRI's "own information".*

64. This argument is also ill-founded. The Higher Education and Research Act 2017 (**"HERA"**) gave UKRI the power to provide financial support on a conditional basis, including (under section 94(3)(c) HERA) requiring a person to whom financial support is given to provide UKRI with "any information it requests for the purpose of the exercise of any of its functions". However, even if funding was provided to UKRI on the condition that the recipients of funding provided information that UKRI requested, such a condition would not preclude the information being provided on a confidential basis. Indeed, the Supreme Court in ***R (Ingenious Media Holdings plc) v Revenue & Customs Commissioners*** [2016] UKSC 54 said (at paragraph17) it was a "well established principle of the law of confidentiality" that "where information of a personal or confidential nature is obtained or received in the exercise of a legal power or in furtherance of a public duty the recipient will in general owe a duty to the person from whom it was received or to whom it relates not to use it for other purposes." That principle is referred to as the *Marcel* principle after the case of ***Marcel v Comr of Police of the Metropolis*** [1992] Ch 225.

65. The *Marcel* principle may be overridden by explicit statutory provisions to the contrary (see ***In re Arrows Ltd (No 4)*** [1995] 2 AC 75 per Lord Browne-Wilkinson at 102:

> "In my view, where information has been obtained under statutory powers the duty of confidence owed on the *Marcel* principle cannot operate so as to prevent the person obtaining the information from disclosing it to those persons to whom the statutory provisions either require or authorise him to make disclosure".

66. HERA does not include any express provision requiring UKRI to disclose information to any person and neither does it expressly authorise any specific disclosure to third parties. While section 1 FOIA makes express provision for the public disclosure of information by public authorities in response to a request, it

also provides for an exemption in respect of information provided in confidence applicable where "disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person".

67. I was not taken to any contractual provision that suggested that the *Marcel* principle should be overridden. While the contract between EPSRC and the CDTs made reference to the possibility of disclosure under information rights legislation, it must be remembered that the test under section 41 FOIA is about whether disclosure of the information to the public "otherwise than under the Act" would constitute an actionable breach of confidence, and the contract did not make provision for EPSRC to disclose information to the public otherwise than under information rights legislation.

68. For these reasons I am unpersuaded by Additional Reason 6 and do not consider the First-tier Tribunal to have erred in any of the ways argued by the Requester.

Appeal Ground 1: *In appeal EA/2018/0216 the First-tier Tribunal erred in its approach to the public interest test as it applies to section 36(2)(c) FOIA.*

69. The First-tier Tribunal dealt but briefly with appeal EA/2018/0216. Its analysis is set out in paragraph 22 of the FtT Decision, which I reproduce in full:

> "The conduct of public affairs and the impact of disclosure of the information is the kernel of this case. The Commissioner, from the submissions of the research council on this issue has properly concluded that it is reasonable to be concerned at credible negative impacts of disclosure. The exemption is engaged. However, the extent of that negative impact and the positive value of greater transparency and accountability, both of UKRI and of the CDTs needs more careful evaluation. Feedback was given to each centre on the basis of the material submitted and its assessment. It was intended to assist the centres in moving forward for the rest of the period of funding to help them address any areas where there appeared to be a shortfall from the expected performance. It was intended to be helpful; the Appellant (from a consideration of some material in the public domain) described it as anodyne. That is not a wholly unfair description. It reflects a step in a complex administrative process of the supervision of substantial levels of public expenditure in public institutions dedicated to the advancement of understanding and the development of young researchers. The people involved in the process know this and how such exercises are carried out. It is a significant aspect of transparency that such material is in the public domain as showing how the system works. It does not (despite the Appellant's occasionally strident claims to the contrary) show failures of administration and supervision, it may provide material to support criticism of the arrangements – so much the better. Through better public understanding of the way research and training for research is organised there can be more informed discussion. While it is reasonable to apprehend some discomfort from publication, the timely publication of this material would have done minimal harm and would have contributed to accountability."

70. The proper approach to section 36 FOIA was explained by the Upper Tribunal in ***Information Commissioner v Malnick and ACOBA*** [2018] UKUT 72 (AAC) (***"Malnick"***) as follows:

> "31. Under section 2 of FOIA, information is exempt from disclosure if an absolute or qualified exemption is conferred and, in the latter case, if the public interest in maintaining the exemption outweighs the public interest in disclosure. Section 36 (for present purposes – see section 2(3)(e)) confers a qualified exemption and so a decision whether information is exempt under that section involves two stages: first, there is the threshold in section 36 of whether there is a reasonable opinion of the QP that any of the listed prejudice or inhibition ("prejudice") would or would be likely to occur; second, which only arises if the threshold is passed, whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing it.
>
> 32. The QP is not called on to consider the public interest for and against disclosure. Regardless of the strength of the public interest in disclosure, the QP is concerned only with the occurrence or likely occurrence of prejudice. The threshold question under section 36(2) does not require the Commissioner or the F-tT to determine whether prejudice will or is likely to occur, that being a matter for the QP. The threshold question is concerned only with whether the opinion of the QP as to prejudice is reasonable. The public interest is only relevant at the second stage, once the threshold has been crossed, That matter is decided by the public authority (and, following a complaint, by the Commissioner and on appeal thereafter by the tribunal)."

71. As discussed above, I am satisfied that the First-tier Tribunal correctly found the section 36 exemption to be engaged as a result of the email from Prof. Nelson, which it was entitled to find amounted to a reasonable opinion of a qualified person that publication of the requested information would or would be likely to result in prejudice.

72. UKRI's Appeal Ground 1 argues that the First-tier Tribunal's approach to the public interest test as it applies to section 36(2)(c) was flawed in two ways:

    a. there was "no sign whatsoever that any, let alone appropriate, weight was given to the qualified person's opinion"; and

    b. the First-tier Tribunal "did not undertake the analysis required by ***O'Hanlon v Information Commissioner*** [2019] UKUT 34 (AAC) (***"O'Hanlon"***), adequately or at all".

73. The Court of Appeal explained in ***DWP v Information Commissioner and Zola*** [2016] EWCA Civ 758 (***"Zola"***) how the opinion of a qualified person is to be factored into the balancing exercise (at paragraph 55):

> "It is clearly important that appropriate consideration should be given to the opinion of the qualified person at some point in the process of balancing competing public interests under section 36. No doubt the weight which is given to this consideration will reflect the tribunal's own assessment of the matters to which the opinion relates. Provided this is done, it does not seem to me to matter greatly whether it is taken into account at the outset or at a later stage."

74. Given that the First-tier Tribunal found the exemption under section 36 FOIA to be engaged and also found that the Information Commissioner "properly concluded that it is reasonable to be concerned at credible negative impacts of disclosure" (see paragraph 22 of the FtT Decision), it cannot be said that the First-tier Tribunal gave the qualified person's opinion no weight at all, as Appeal Ground 1 asserts.

75. The First-tier Tribunal was not required to accord "deference" to the qualified person's opinion but rather was required to give it "appropriate" consideration. So, what amounts to "appropriate consideration"? The answer to that must depend on all the circumstances of the case.

76. In this case Prof. Nelson provided a very brief opinion that was very short on reasoning. In those circumstances, the First-tier Tribunal was entitled to give the opinion very little weight. Having been persuaded that it was reasonable to be "concerned at credible negative impacts of disclosure", the First-tier Tribunal was entitled to dig deeper.

77. The First-tier Tribunal quite properly carried out its own assessment of the various factors supporting disclosure and the various factors supporting upholding the exemption (as contemplated in ***Zola***) giving those factors appropriate weight. Having carried out that exercise, the First-tier Tribunal concluded that while Prof. Nelson was right to "apprehend some discomfort from publication", publication would contribute to accountability and would result in only "minimal harm". That was an assessment that was clearly open to it.

78. The Requester argued with characteristic bluntness that the qualified person's opinion "was given as much weight and consideration as it deserved". I am bound to agree. It may be that Prof. Nelson could have provided a more compelling opinion, and UKRI could have made a stronger case on the negative impact that disclosure would have, but the time for doing so was before the First-tier Tribunal. These horses have long since bolted.

79. Turning to the second flaw for which UKRI argues, as will appear from what I have said in relation to the first argument in support of Appeal Ground 1, it is plain to me that the First-tier Tribunal did undertake the analysis contemplated in ***O'Hanlon***. It identified the "values" giving the public interests their significance, it considered the interests of transparency and accountability that militated in favour of disclosure, and the negative impact that disclosure may have, which it decided would be minimal and would be outweighed by the interests favouring disclosure, and explained why it struck the balance as it did.

80. For these reasons I am not satisfied that the First-tier Tribunal erred materially in law in the way it performed the public interest balancing exercise and its reasons for deciding as it did were adequate. Appeal Ground 1 is dismissed and the First-tier Tribunal's decision in EA/2018/0216 is confirmed.

Appeal Ground 2: *In appeal EA/2019/0139 the First-tier Tribunal erred in relation to whether the information requested was "confidential" for the purposes of section 41 FOIA.*

81. The proper approach to establishing whether there is an actionable breach of confidence was explained by Megarry J in ***Coco v AN Clark (Engineers) Ltd*** [1968] FSR 415 (***"Coco"***) at 419:

> "In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself, in the words of Lord Greene MR in ***Saltman Engineering Co Ltd v Campbell Engineering Co Ltd***, must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it."

82. In Attorney-General v Guardian Newspapers (No. 2) [1990] 1 AC 109 (***"Spycatcher"***), Lord Goff set out three "limiting principles" applicable to the common law on confidentiality:

> "The first limiting principle (which is rather an expression of the scope of the duty) is highly relevant to this appeal. It is that the principle of confidentiality only applies to information to the extent that it is confidential. In particular, once it has entered what is usually called the public domain (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it. I shall be reverting to this limiting principle at a later stage.
>
> The second limiting principle is that the duty of confidence applies neither to useless information, nor to trivia. There is no need for me to develop this point.
>
> The third limiting principle is of far greater importance. It is that, although the basis of the law's protection of confidence is that there is a public interest that confidences should be preserved and protected by the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. This limitation may apply, as the learned judge pointed out, to all types of confidential information. It is this limiting principle which may require a court to carry out a balancing operation weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure."

83. The First-tier Tribunal found that each of Lord Goff's limiting principles in ***Spycatcher*** applied.

84. In relation to the first limiting principle, it found that the information the subject of the Second Request did not have the necessary quality of confidence because "[d]espite words to the contrary it is clear that UKRI did not consider some at least of the material to be confidential – else why did it publish case studies as publicity material explaining how it carried out its work?"

85. This reasoning discloses multiple errors: the First-tier Tribunal was wrong to focus on whether UKRI viewed the requested information as confidential because the quality of confidence depends not on how the recipient views the information, but rather on the reasonable expectations of the confider, and the terms on which the information was provided.

86. Further, it was logically fallacious for the First-tier Tribunal to reason that because UKRI did not view "some at least" of the requested information to be confidential, none of the information was confidential.

87. Similarly, while the fact that UKRI published information relating to two case studies in promotional material may establish that that information is not confidential because it is in the public domain, it is not capable of establishing that the information that has not been published, and so is not in the public domain, also lacked the necessary quality of confidence.

88. In relation to Lord Goff's second limiting principle, the First-tier Tribunal found that "[the] material contained within returns may be helpful in giving a useful picture (for which see the next point) or is trivial – or both".

89. Mr Goss, for UKRI, said that it was difficult to see how information could be both helpful in giving a useful picture and trivial at the same time, and argued that the First-tier Tribunal's reasoning was inconsistent in this regard. I do not agree. Information may be trivial to one recipient but highly useful to another, depending on the recipient's particular interest in receiving the information, and depending on what other information they have access to which might render the new information much more useful. As the Requester put it (in paragraph 20 of his skeleton argument): "[s]ometimes the whole can be greater than the sum of its parts". However, this point tends to strengthen UKRI's case because it highlights that information that is superficially trivial may on closer consideration have significant value, and so should not be excluded under Lord Goff's second limiting principle.

90. What really matters is whether the preservation of the information's confidentiality is "of substantial concern" to the party confiding the information (see ***Moorgate Tobacco Co Ltd v Philip Morris Ltd (No. 2)*** (1984) 156 CLR 414 at 438), which is "not a high threshold" (per Arnold J in ***Force India Formula One Team Limited v 1 Malaysia Racing Team SDN BHD*** [2012] RPC 29 at 223).

91. In any event, since the First-tier Tribunal appeared to contemplate that at least some of the material contained within the returns was "helpful in giving a useful picture", but did not identify what information fell into that category, and it did not explain adequately why it concluded that none of the information had the requisite quality of confidence.

92. For these reasons I am satisfied that the First-tier Tribunal erred in law when it decided that the requested information was "not in any meaningful sense confidential" (see paragraph 29 of the FtT Decision).

Appeal Ground 3: *In appeal EA/2019/0139 the First-tier Tribunal erred in relation to the availability of the "public interest defence" to an otherwise actionable breach of confidence.*

93. The First-tier Tribunal decided that even if the requested information did contain confidential material, there was a clear public interest in disclosure. Its reasoning on this is set out at paragraph 27 of the FtT Decision:

> "Lord Goff emphasized the possibility of a countervailing public interest which favours disclosure. Given the scale and significance of the work of research councils their effectiveness is a clear matter of public interest. There is a real public interest in both disclosing how universities are working with these arrangements for training PhD students and how UKRI/EPSRC evaluates the information."

94. The First-tier Tribunal appears to have approached the applicability of the exemption under section 41 FOIA as if section 41 was a qualified exemption. It is not. Rather, it is an absolute exemption that is subject to the availability of a public interest defence to a claim for breach of confidence. The exercise to be carried out under section 41 FOIA is distinct from the section 2(2)(b) balancing exercise. While section 2(2)(b) requires a weighing of the public interests in favour of disclosure against the public interests in maintaining the exemption, section 41 FOIA requires a determination of whether the public interest in favour of disclosure is such that it would defeat an otherwise actionable claim for breach of confidence.

95. Where information the subject of a request under FOIA is confidential, consideration of the applicability of section 41 FOIA must proceed from the starting point that there is a public interest in confidence being respected. In ***London Regional Transport v Mayor of London*** [2003] EMLR 4 (***"LRT v Mayor of London"***) Robert Walker LJ set out principles to be applied when evaluating a public interest defence to an action for breach of confidence. While he acknowledged that the defence was not restricted to those cases of wrongdoing on the part of the claimant, he said it was important to confine such a defence "within strict limits" as otherwise it risked becoming "not so much a rule of law as an invitation to judicial idiosyncrasy by deciding each case on an ad hoc basis as to whether, on the facts overall, it is better to respect or to override the obligation of confidence". He approved the judge below's application of a standard of whether the defendants had shown an "exceptional case" for publication of the relevant information.

96. Phillips CJ considered the circumstances in which the public interest defence would be available in ***HRH Prince of Wales v Associated Newspapers Ltd*** [2008] Ch 57 (***"Prince of Wales"***), formulating the test as "whether a fetter of the right of freedom of expression is, in the particular circumstances, "necessary in a democratic society". He said "the test to be applied when considering whether it is necessary to restrict freedom of expression in order to prevent disclosure of information received in confidence is not simply whether the information is a matter of public interest but whether, in all the circumstances, it is in the public interest that the duty of confidence should be breached." While the circumstances of the Prince of Wales case were very different from those in this appeal, the test articulated by Phillips CJ is of general application.

97. The First-tier Tribunal did not direct itself to the public interest in maintaining confidence in the requested information, resulting in it weighing only those interests in favour of disclosure. Further, it did not assess whether the interests in favour of disclosure amounted to an "exceptional case" (per ***LRT v Mayor of London***), but rather based its decision on its finding that there was "a real public interest in both disclosing how universities are working with these arrangements for training PhD students and how UKRI/EPSRC evaluates the information". As such, it applied the wrong test. I am satisfied that the First-tier Tribunal's errors in appeal EA/2019/0139 were material in the sense that, had they not been made, the outcome of the appeal might well have been different. The appropriate disposal is therefore to exercise my discretion under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 to set the decision aside. I consider the First-tier Tribunal which, with its expert members, to be best placed to determine the matters in issue in the appeal and so exercise my discretion to

remit the matter to the First-tier Tribunal rather than determining the matter for myself.

Conclusion

98. I therefore:

    a. dismiss the appeal in relation to EA/2018/0216 (to which Appeal Ground 1 relates),

    b. allow the appeal in relation to EA/2019/0139 (on both Appeal Grounds 2 and 3) and

    c. dismiss each of the Requester's Additional Reasons arguments.

99. The decision of the First-tier Tribunal in EA/2018/0216 is confirmed. To the extent that UKRI has not yet disclosed information that the First-tier Tribunal ordered it to disclose in that appeal, it shall now disclose that information.

100. The decision of the First-tier Tribunal in EA/2019/0139 was made in material error of law. The appeal is remitted to the First-tier Tribunal for redetermination in accordance with the Directions above, which may be supplemented by further Directions by a tribunal judge, registrar or caseworker in the General Regulatory Chamber of the First-tier Tribunal.

Thomas Church
Judge of the Upper Tribunal

Authorised by the Judge for issue on 9 April 2026